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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYAN MATTHEW HORAN,

Defendant and Appellant.

A138171

(Solano County  
Super. Ct. No. FCR281112)

Bryan Matthew Horan (appellant) challenges the trial court's judgment imposing a previously suspended three-year state prison term after appellant was placed on probation for his no contest plea to second degree robbery (Pen. Code, § 211<sup>1</sup>) and then went on to violate his probation on three occasions. Appellant's counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and requests that we conduct an independent review of the record. Appellant was informed of his right to file a supplemental brief and did not file such a brief. Having independently reviewed the record, we conclude there are no issues that require further briefing and affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

On January 19, 2011, an information was filed alleging appellant and co-defendant Dean Travis Laroski committed second degree robbery (§ 211, count one) and offered to sell marijuana (Health & Saf. Code, § 11360, subd. (a), count two). The information alleged that count one was a violent and serious felony (§§ 667.5, subd. (c), 1192.7,

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

subd. (c)), and also alleged two firearm enhancements as to count one (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b)) and one firearm enhancement as to count two (§ 12022, subd. (a)(1)).

The information was based on an incident that occurred on October 28, 2010. That evening, Kenneth Joseph received a phone call from someone who offered to sell him “a lot of marijuana for a very cheap price.” When Joseph informed the caller that he did not have as much money as was requested, the caller said, “ ‘Oh, that’s fine. We’ll pick you up and you can come smoke with us and it will be all right.’ ” Approximately one hour later, Joseph was waiting at the designated spot when an Oldsmobile drove up. Joseph saw appellant and Laroski sitting in the car. Joseph got inside the car and they drove to a park. Once there, Joseph was told that the marijuana was inside “ ‘somebody’s apartment,’ ” so he got out of the car with appellant and Laroski and walked to the front door of the apartment. When they got to the front steps, the lights inside went out. Laroski asked Joseph to use his cell phone. Laroski made several calls, then told Joseph that they needed to wait in the park for some people they were supposed to meet.

After waiting for approximately 45 minutes in the park, a taxi drove by. Appellant and Laroski “got nervous because they thought it was a police car,” but Joseph said, “ ‘Don’t worry. It’s a taxi.’ ” Laroski said in response, “ ‘Well, that’s what you’re taking home.’ ” Joseph was confused by the statement and looked at appellant and Laroski, when he noticed appellant holding a small, silver semi-automatic gun in his hand. Appellant told Joseph that he needed to turn around or he would be shot. Appellant and Laroski then left the park with Joseph’s cell phone and money—\$180 to \$200 in cash.

On April 20, 2011, appellant pleaded no contest to count one. The remaining count and enhancements were dismissed with a *Harvey* waiver.<sup>2</sup> The court suspended imposition of sentence, awarded appellant total credit of 246 days, and placed him on probation for five years. The court imposed \$280 in fines and fees and awarded the victim \$180 in restitution. Under the terms and conditions of probation, appellant was

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<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

required, among other things, to report to and comply with all orders of the probation officer and attend and successfully complete counseling and therapy as directed by the probation officer.

On August 8, 2011, the court revoked probation after appellant tested positive for marijuana and cocaine. At the scheduled probation revocation hearing on August 29, 2011, appellant waived his right to a hearing and admitted he violated probation by failing to abstain from the use of illegal drugs. On January 31, 2012, the court reinstated probation, extended it by three years, and ordered appellant to enroll in and complete a Category II residential treatment program.

On March 6, 2012, the court revoked probation because appellant allegedly engaged in a verbal confrontation with another program participant in violation of the program's policy and was asked to leave the program as a result. At a probation revocation hearing, the court found appellant violated the terms of his probation by failing to successfully complete a Category II residential program. On June 29, 2012, the court imposed the middle term of three years for the violation of section 211 but suspended execution of the sentence. The court reinstated probation, extended it by three years, and ordered appellant to enroll in and complete a Category I or II residential program.

On January 14, 2013, the court revoked probation because appellant failed to complete a Category I or II program and failed to report to or maintain contact with his probation officer. At the probation revocation hearing on February 4, 2013, appellant admitted he had not spoken to his probation officer since November 2012. The court found appellant willfully violated probation because he did not complete the required program and failed to report to probation. On March 7, 2013, the court denied a further grant of probation and imposed the previously suspended middle term of three years in state prison and acknowledged a total credit award of 64 days.

### **DISCUSSION**

We have reviewed the entire record and conclude there are no arguable issues that warrant further briefing. There was a factual basis for appellant's plea, and there is no

clear and convincing evidence of good cause to allow appellant to withdraw his plea. There is sufficient evidence in the record supporting the court's decision to revoke probation. Appellant was adequately represented by counsel at every stage of the proceedings. There was no sentencing error. There are no issues that require further briefing.

**DISPOSITION**

The judgment is affirmed.

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McGuiness, P. J.

We concur:

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Pollak, J.

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Siggins, J.